

REMARKS

Claims 1-4 and 6-14 are pending in the present application. By this Amendment, previously presented claim 1, 4, 6, 8-9 and 12 have been amended; and previously presented claim 5 has been canceled. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendments and the following remarks.

Entry of the above amendments is proper under 37 C.F.R. § 1.116 (a) in that the above amendments (1) place the claims in condition for allowance; (2) place the claims in better condition for consideration on appeal, if necessary; (3) do not raise any new issues; and (4) do not add new claims without canceling a corresponding number of claims.

It should be noted that the above claim amendments simply (1) incorporate the subject matter of previously presented dependent claim 5 into previously presented claim 1; (2) cancel previously presented claim 5; (3) provide antecedent basis for the term “concentrate composition” in previously presented claim 4 and the term “the adjuvant” in previously presented claim 12; and (4) change the dependency of previously presented claims 6 and 8-9 from canceled claim 5 to new independent claim 1.

I. Prior Art Rejection:

Rejection of Previously Presented Claims 1-4 Under 35 U.S.C. §103(a) In View Of U.S. Patent No. 5,229,122 (Chadwick) In Combination With U.S. Patent No. 4,517,201 (Kerry)

Previously presented claims 1-4 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of U.S. Patent No. 5,229,122 issued to Chadwick et al. (hereinafter, “Chadwick”) and further in view of U.S. Patent No. 4,517,201 issued to Kerry et al. (hereinafter, “Kerry”). This rejection is moot given that the subject matter of previously presented claim 5 has been incorporated into previously presented independent claim 1. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claims 5-13 Under 35 U.S.C. §103(a) In View Of Chadwick In Combination With Kerry and U.S. Patent No. 4,808,408 (Baker)

Previously presented claims 5-13 were rejected under 35 U.S.C. §103(a) as being

unpatentable in view of Chadwick and further in view of Kerry and U.S. Patent No. 4,808,408 issued to Baker et al. (hereinafter, "Baker"). This rejection is respectfully traversed for the reasons given in Applicants' June 12, 2009 Amendment and Response, as well as the reasons provided below.

The September 18, 2009 final Office Action suggests that one skilled in the art, given the teaching of Chadwick, would have been motivated to (1) seek out the teachings of Kerry and Baker, and (2) combine select portions of the teaching of Kerry and select portions of the teaching of Baker with the teaching of Chadwick, and in the process of doing so, make obvious Applicants' claimed invention as recited in independent claim 1 (i.e., independent claim 1 having incorporated therein the subject matter of previously presented claim 5). Applicants disagree.

Applicants' claimed invention is directed to compositions comprising (a) a non-encapsulated aqueous solution or dispersion of an agrochemical and (b) a suspension in the aqueous solution or dispersion of a microencapsulated liquid, water-insoluble, bioperformance-enhancing adjuvant for the agrochemical, wherein the adjuvant comprises a compound having formula (I) or an alkoxyated derivative thereof



wherein R is a branched or straight chain alkyl or akenyl group having from 12 to 20 carbon atoms and X is selected from hydroxy; primary, secondary, tertiary or quaternary amine; amine oxide; phosphonate; phosphate; phosphate ester; thiol; sulfoxide; sulphone; sulphonate; sulphate; a heterocyclic moiety; glucoside; polyglucoside or alkylated glucoside; sarcosinate; betaine; amidoamine; carboxylic acid; amide; ester; ether sulphate; ether amine; ether carboxylate; and ether phosphonate.

As noted in Applicants' June 12, 2009 Amendment and Response, Applicants' claimed invention enables the formation of compositions containing an agrochemical and a "built-in" adjuvant compound, wherein the "built-in" adjuvant compound is physically separated from the agrochemical via microencapsulation of the "built-in" adjuvant compound. The art of record, alone or in combination with the general state of the art, fails to disclose, teach or suggest such compositions.

It should be noted that each of the teachings of Chadwick and Kerry is not at all concerned with compositions containing an adjuvant compound as recited in Applicants' claimed invention. It should be further noted that each of the teachings of Chadwick, Kerry and Baker is not at all concerned with compositions containing an agrochemical and a "built-in" adjuvant compound, wherein the "built-in" adjuvant compound is physically separated from the agrochemical via microencapsulation of the "built-in" adjuvant compound.

In contrast to Applicants' claimed invention, the proposed combination of the teachings of Chadwick, Kerry and Baker, even if proper, fails to teach or suggest a composition comprising a "built-in" adjuvant compound that is physically separated from an agrochemical via microencapsulation of the "built-in" adjuvant compound prior to combining the "built-in" adjuvant compound with the agrochemical. More importantly, the proposed combination of the teachings of Chadwick, Kerry and Baker, even if proper, actually teaches away from Applicants' claimed invention directed to a composition comprising a "built-in" adjuvant compound that is physically separated from an agrochemical via microencapsulation of the "built-in" adjuvant compound.

The September 18, 2009 final Office Action appears to equate the "coacervation adjuvant" of Baker with Applicants' adjuvant as recited in independent claim 1 (see, for example, page 6, line 19 to page 7, line 5 of the September 18, 2009 final Office Action). Further, the September 18, 2009 final Office Action appears to equate the "core ingredient" of Baker with Applicants' agrochemical as recited in independent claim 1 (see, for example, page 6, lines 16-19 of the September 18, 2009 final Office Action).

The teaching of Baker clearly discloses that the "coacervation adjuvant" and the "core ingredient" are mixed in step (1) of Baker's disclosed process (see, for example, column 2, lines 27-28 of Baker) as noted in the September 18, 2009 final Office Action (see, for example, page 6, lines 11-14 of the September 18, 2009 final Office Action). Consequently, one skilled in the art, given the teaching of Baker, either alone or in combination with the teachings of Chadwick and Kerry, would have been guided to intimately mix the disclosed "coacervation adjuvant" and the disclosed "core ingredient" when forming a given composition.

It is respectfully submitted that if one skilled in the art combined the teachings of

Chadwick, Kerry and Baker as suggested in the September 18, 2009 final Office Action, one skilled in the art would still fail to recognize the benefits and technical advantages of Applicants' claimed invention. By physically separating the adjuvant recited in Applicants' independent claim 1 from the agrochemical recited in Applicants' independent claim 1, Applicants have discovered advantageous compositions that provide one or more of the following benefits that are not recognized in the art of record, either alone or in combination with the general state of the art: (1) the ability to effectively incorporate water-insoluble adjuvants into aqueous agrochemical compositions; (2) the ability to minimize interaction between water-insoluble adjuvants and incompatible agrochemicals; (3) the ability to eliminate method steps necessary during "tank mixing" of composition components; (4) the ability to incorporate amounts of water-insoluble adjuvants and/or agrochemical into a given aqueous agrochemical composition at concentration levels much higher than previously known; and (5) the ability to provide a slight delay between (i) the time that an agrochemical contacts a plant and the time that a water-insoluble adjuvant contacts the same plant.

For at least the reasons given above, Applicants respectfully submit that the proposed combination of the teachings of Chadwick, Kerry and Baker, taken alone or in combination with the general state of the art, fails to make obvious Applicants' claimed invention as embodied in independent claim 1. Since claims 2-4 and 6-13 depend from independent claim 1 and recite additional claim features, the proposed combination of the teachings of Chadwick, Kerry and Baker, taken alone or in combination with the general state of the art, fails to make obvious Applicants' claimed invention as embodied in dependent claims 2-4 and 6-13. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claim 14 Under 35 U.S.C. §103(a) In View Of Chadwick In Combination With Kerry, Baker and U.S. Patent No. 5,393,791 (Roberts)

Previously presented claim 14 was were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Chadwick and further in view of Kerry, Baker and U.S. Patent No. 5,393,791 issued to Roberts (hereinafter, "Roberts"). This rejection is respectfully traversed for the reasons given in Applicants' June 12, 2009 Amendment and Response, as well as the reasons

provided herein.

As noted above, the proposed combination of the teachings of Chadwick, Kerry and Baker, taken alone or in combination with the general state of the art, fails to make obvious Applicants' claimed invention as embodied in independent claim 1. The proposed addition of the teaching of Roberts to the proposed combination of the teachings of Chadwick, Kerry and Baker fails to make obvious Applicants' claimed invention as embodied in dependent claim 14. In addition, the proposed addition of the teaching of Roberts to the proposed combination of the teachings of Chadwick, Kerry and Baker further teaches away from Applicants' claimed invention as embodied in dependent claim 14.

The teaching of Roberts is directed to an essentially nonaqueous composition containing one or more adjuvants in combination with a blend of surfactants and a buffering agent. The disclosed nonaqueous composition of Roberts is subsequently added to an aqueous pesticide or herbicide composition during a "tank mixing" process step so that the one or more adjuvants may be combined with the pesticide or herbicide immediately prior to applying to a plant. See, for example, column 6, lines 55-63 of Roberts.

Like the teachings of Chadwick, Kerry and Baker, the teaching of Roberts is not at all concerned with the formation of a stable composition comprising an agrochemical and a "built-in" adjuvant physically separated from the agrochemical via microencapsulation of the "built-in" adjuvant prior to combining with the agrochemical.

In addition, it is respectfully submitted that if the proposed combination of the teachings of Chadwick, Kerry, Baker and Roberts suggests anything to one skilled in the art, the proposed combination fails to teach or suggest Applicants' claimed invention as embodied in dependent claim 14. For example, the teachings of Kerry and Roberts appear to suggest to one skilled in the art compositions formed using a "tank mixing" step (see, for example, column 2, lines 6-12 of Kerry, and column 6, lines 55-63 of Roberts); however, Applicants' claimed invention teaches away from such compositions. Applicants respectfully submit that one skilled in the art, given the teaching of Roberts alone or in combination with the teachings of Chadwick, Kerry and Baker, would have been motivated to utilize a tank mixing procedure to form agrochemical-containing compositions, not a microencapsulation procedure for forming

compositions containing a “built-in” adjuvant physically separated from an agrochemical.

Given the divergent teaching of Chadwick, Kerry, Baker and Roberts, it is difficult for Applicants to understand why one skilled in the art, given the teaching of Chadwick, would have (1) sought out each of the teachings of Kerry, Baker and Roberts, and (2) subsequently combined select portions of the teachings of Chadwick, Kerry, Baker and Roberts as suggested in the September 18, 2009 final Office Action. Applicants respectfully submit that the only motivation for attempting to combine select portions of the teachings of Chadwick, Kerry, Baker and Roberts has been gleaned from Applicants’ own specification and claims, not from what is suggested in the teachings of Chadwick, Kerry, Baker and Roberts, taken alone or in combination with the general state of the art.

For at least the reasons given above, Applicants respectfully submit that the proposed combination of the teachings of Chadwick, Kerry, Baker and Roberts, taken alone or in combination with the general state of the art, fails to make obvious Applicants’ claimed invention as embodied in dependent claim 14. Accordingly, withdrawal of this rejection is respectfully requested.

II. Conclusion:

For at least the reasons given above, Applicants submit that claims 1-4 and 6-14 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Brooks believe that further action is necessary to place the application in better condition for allowance, Examiner Brooks is respectfully requested to contact Applicants’ representative at the telephone number listed below.

Amendment And Response Under 37 C.F.R. § 1.116
Serial No. 10/525,161

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,
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